

IN THE

JUL 2 1979

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-11

REVEREND JOSEPH BOONE,

Petitioner.

—v.—

THE STATE OF GEORGIA,

Respondents.

**PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
STATE OF GEORGIA**

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IN THE SUPREME COURT OF
THE UNITED STATES

October Term, 1979

No. _____

REVEREND JOSEPH BOONE,

Petitioner,

vs.

THE STATE OF GEORGIA,

Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
STATE OF GEORGIA

Petitioner, Reverend Joseph Boone,
prays that a writ of certiorari issue to
review the judgment of the Supreme Court
of Georgia entered on April 4, 1979.

OPINION BELOW

The opinion of the Supreme Court
of Georgia reversing the decision of the

State Court of Fulton County, Georgia, is reported at 243 Ga. 416, 254 S.E.2d 367 appended hereto at App. infra, p. 4-A. (1979) The order of the State Court of Fulton County, Georgia is appended hereto at App., infra, p. 1-A.

JURISDICTION

The opinion of the Supreme Court of Georgia was entered on April 4, 1979. The Supreme Court of the United States has jurisdiction to grant a writ of certiorari in this case pursuant to 28 U.S.C. §§1257(3),¹ 2101(d) and U.S. Sup. Ct. Rule 22.1, 28 U.S.C..

¹A final judgment upholding the validity of a state statute against Constitutional challenge has been rendered herein by the highest court of the State of Georgia. Notwithstanding the fact that further proceedings must take place on the merits, the opinions of this Court demonstrate that the decision of the Georgia Supreme Court is "final" within the meaning of 28 U.S.C. §1257. Cox Broadcasting Corp. v. Cohn 420 U.S. 469 (1975).

QUESTIONS PRESENTED FOR REVIEW

- I. WHETHER GA. LAWS 1976, PP. 471, 472, GA. CODE §§91-134 AND 91-9908, WHICH RENDERS SPEECH-RELATED CONDUCT ON ALL STATE PROPERTY AND BUILDINGS UNLAWFUL, IS VAGUE AND OVERBROAD IN VIOLATION OF THE RIGHT TO DUE PROCESS UNDER THE FOURTEENTH AMENDMENT, BY DENYING FAIR NOTICE OF ITS PROHIBITIONS, VESTING OFFICIALS WITH UNFETTERED DISCRETION FOR ITS ENFORCEMENT, AND INFRINGING THE EXERCISE OF FIRST AMENDMENT RIGHTS TO FREE SPEECH AND ASSEMBLY.

- II. WHETHER GA. LAWS 1976, PP. 471, 472, GA. CODE §§91-134 AND 91-9908, WHICH RENDERS SPEECH-RELATED CONDUCT ON ALL STATE PROPERTY AND BUILDINGS UNLAWFUL, VIOLATES THE FIRST AMENDMENT IN THAT THE BREADTH OF ITS PROHIBITIONS PUNISHES THE EXERCISE OF RIGHTS TO FREE SPEECH AND ASSEMBLY.

CONSTITUTIONAL AND STATUTORY
PROVISIONS INVOLVED

This case involves the First and Fourteenth Amendments to the Constitution of the United States, and the following Georgia statute¹:

Ga. Laws 1976, pp. 471, 472. (Ga. Code Sec. 91-134).

Section 1. The Georgia Building Authority and its security personnel are hereby authorized and empowered to deny the entrance of any person into or upon any property or building of the Authority or the State when such person's activities

¹The above-cited statute--the basis of Petitioner's arrest--was enacted in 1976 and was effective March 18, 1976. In 1978, Section 1 was amended, extending its authority to "members of the Georgia State Patrol and Georgia Bureau of Investigation." Ga. Laws 1978, p. 850.

are intended to disrupt or interfere with the normal activities and functions carried on in such property or building or have the potential of violating the security of the personnel therein. The Authority and its security personnel are hereby authorized and empowered to deny entrance into or upon any such property or building of any person displaying any sign, banner, placard, poster or similar device. The Authority and its security personnel are hereby authorized and empowered to remove any person from any such property or building when such person's activities interfere with or disrupt the activities and the operations carried on in such property or building or constitute a safety hazard to such property or

building or the inhabitants thereof. The authority and power provided herein shall also extend to any property or building utilized by the State or any agency thereof. Any law enforcement officer assisting the Authority or any of its security personnel shall have the same authority and power bestowed upon the Authority by this law [§§ 91-134, 91-135, 91-9908].

Ga. Laws 1976, pp. 471-472. (Ga. Code Sec. 91-9908).

Section 3. Any person who shall refuse to obey any lawful order of any such security personnel or law enforcement officer issued pursuant to this Act, [Sections 91-134 and 91-135], or any person who shall refuse to vacate any such property

or building when requested to do so, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished as for a misdemeanor.

STATEMENT OF THE CASE

On September 15, 1976, the Petitioner, Reverend Joseph Boone, was among twenty to forty Georgia citizens who entered the World Congress Center, 285 Magnolia Street, N.W., Atlanta, Georgia. The Center is a very large convention center involving several acres under roof, and is the property of the State Building Authority of Georgia. Inside, Reverend Boone led prayers in protest against diminishing welfare benefits in the State of Georgia, and employment discrimination occurring in the Center. Highway Patrolmen, who were assisting Georgia Building Authority security personnel, surrounded the demonstrators, removed their hats

and "respected" the prayers of the group. After the prayer had been completed, Patrolmen ordered Reverend Boone to leave the Center. Reverend Boone asked to meet with the Manager of the Center and was told to wait while he was summoned. Subsequently, the Patrolmen refused to let the group wait and arrested all the demonstrators.

Pursuant to Ga. Laws 1976, pp. 471, 472, Ga. Code §91-134, police charged the demonstrators with a misdemeanor. (R. 3) App., infra, 10-A. At the preliminary hearing all charges were dismissed except as to Reverend Boone. No order to leave the Center was given except to Reverend Boone. A demurrer was filed, challenging the constitutionality of the statute on its face. (R. 4) The demurrer asserted that the statute was vague and overbroad in violation of the due process and equal

protection clauses of the United States Constitution, and that the statute restricted free speech and assembly in violation of the First Amendment.

On November 8, 1978, a hearing was held before Honorable Daniel Duke, Judge of the State Court of Fulton County. The court declared the statute in question "unconstitutional on its face because of its vagueness, overbreadth, and prior restraint on speech in violation of the Georgia and United States Constitutions." The court found that the statute vested security personnel with the power to exclude persons from State property based on a determination of "the subjective intent of a party prior to any act being committed." App., infra, p. 2-A. (emphasis added) The court further interpreted Ga. Code §91-134 to authorize the exclusion of persons from State property under

circumstances where they merely display any sign, banner, placard, poster or similar device. The court's opinion concluded that Ga. Code §§91-134 and 91-9908 are unconstitutionally vague and overbroad in violation of the due process and equal protection clauses, and restrict free speech and assembly contrary to the First Amendment. The petitioner was discharged. Subsequently, the State filed a Notice of Appeal to the Supreme Court of Georgia.

(R. 1)

On appeal, the Georgia Supreme Court reversed the lower court decision finding that "it was error to hold the statute unconstitutional." App., infra, p. 6-A. The majority opinion held that Ga. Code §91-134 was not facially overbroad or so vague as to violate First Amendment guarantees of free speech and assembly, nor was it violative of

constitutional protections of due process or equal protection under the Fourteenth Amendment.

The Georgia Supreme Court's analysis held that the language of the statute proscribes "specific conduct" which disrupts or has the potential to disrupt normal activities and does not infringe on the exercise of free speech. The court upheld the authority of state personnel to exclude based on their subjective evaluation of persons' intent to disrupt or to potentially violate the security of building personnel, including the authority to make those determinations where no overt act has been committed, and unguided by objective criteria regarding the behavior of persons seeking entrance. The court failed to find that this unfettered discretion rendered the statute's prohibitions vague and overbroad in

violation of Petitioner's constitutional rights.

The power of security personnel "to deny entrance into or upon any such property or building of any person displaying any sign, banner, placard, poster or similar device," (Ga. Code §91-134) (emphasis added), was held by the court not to prohibit entry "merely because such signs or placards are present." App., infra, p. 8-A. The Georgia Supreme Court found that this provision could only be interpreted by construing it in conjunction with the exercise of discretion regarding intent and potential for violence, described in the first sentence of the statute.

The majority's opinion further held that the statute comports with fair notice. The court was only able to arrive at this interpretation by grafting onto

the statute the requirement of an "actual or imminent threat of harm or of disruption of on-going operations on State property or in buildings housing State agencies." App., infra, p. 8-A.

The court held finally that the statute represented a reasonable time, place and manner regulation not "'sweeping within its prohibitions' what may not be punished under the First and Fourteenth Amendments." App., infra, p. 8-A.

The Georgia Supreme Court's interpretation of the Statute before this Court is not sufficient to uphold the constitutionality of the statute. Petitioners assert further that the purported "saving construction" devised and applied by the Georgia Supreme Court is required neither by the language or context of the statute challenged here. The limitations imposed by the court's construction cannot "save" this statute which unconstitutionally punishes Petitioner's exercise of First and Fourteenth Amendment Rights.

REASONS FOR GRANTING THE WRIT

I. The Opinion Of The Georgia Supreme Court Upholding The Constitutionality Of Ga. Laws 1976, pp. 471, 472, Ga. Code §§91-134 and 91-9908, Is In Conflict With Applicable Decisions Of This Court.

A. The Georgia Statute Is Not A Constitutionally Permissible Regulation Of Time, Place And Manner In That It Is facially Overbroad.

Section 1 of Ga. Laws 1976, pp. 471, 472 (hereinafter referred to as Ga. Code §91-134) impermissibly proscribes conduct that includes expressive activity protected by the First Amendment. The statute is overbroad, and as such, unconstitutional on its face because it "does not aim specifically at evils within the area of government control, but . . . sweeps within its ambit other activities that constitute an exercise" of protected expressive rights. Thornhill v. Alabama 310 U.S. 88, 97 (1940).

Any regulation of speech-related conduct is constitutionally impermissible unless (1) it furthers an important or substantial governmental interest, (2) the governmental interest is unrelated to the suppression of free expression, and (3) the incidental restriction on First Amendment freedoms is no greater than is essential to the furtherance of that interest. United States v. O'Brien 391 U.S. 367, 377 (1968). Statutes regulating in the First Amendment area must be "couched in the narrowest terms that will accomplish the pin-pointed objective permitted by . . . the essential needs of the public order In this sensitive field, the State may not employ 'means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved.' Shelton v. Tucker 364 U.S. 479, 488, 5 L.Ed.2d. 231, 237, 81 S.Ct. 247 (1960)." Carroll v. President and Commissioners of Princess Anne County 393 U.S.

174, 183-94 (1968). E.g., Gregory v. City of Chicago 394 U.S. 111 (1969); Edwards v. South Carolina 372 U.S. 229 (1963); NAACP v. Button 371 U.S. 415 (1963).

On its face and as construed by the Supreme Court of Georgia, the Georgia statute in question is unconstitutional because it was not drawn with the specificity required by the decisions of this Court--creating a blanket ban on speech-related activity occurring on any building or property of the State of Georgia.

Regulation as to place bears important constitutional significance in the First Amendment area in two ways. First, this Court has always offered a preferred place to the unfettered exercise of First Amendment rights "to petition the Government for a redress of grievances," finding that free access for the exchange of ideas is essential to a strong representative democracy. The site of the

legislature and governmental agencies has thus been a traditional forum for the expression of such ideas. Through Ga. Laws 1976, pp. 471, 472, Ga. Code 5591-134 and 91-9908, the State of Georgia has impermissibly sought to insulate itself by denying citizens access to all state government forums to voice their protests.

Secondly, courts have distinguished among types of public places, finding that the character of the place affects the degree of restriction tolerable under the Constitution. Grayned v. City of Rockford 408 U.S. 104, 116 (1972); Lehman v. City of Shaker Heights 418 U.S. 298, 302 (1974). In each case, "the crucial question is whether the manner of expression is basically incompatible with the normal activity of a particular place at a particular time." In making this determination, courts "must weigh heavily the

fact that communication is involved" and examine carefully whether the regulation at issue is "narrowly tailored to further the State's legitimate interest." Grayned v. City of Rockford 408 U.S. 104, 116-117 (1972). Furthermore, the propriety of the place turns on the relevance of the premises to the protest. Relevance may be found either because the place represents the object of the protest, or because demonstrators find a relevant audience in a particular place. Brown v. Louisiana 383 U.S. 131 (1966); Edwards v. South Carolina 372 U.S. 229 (1963); Wolin v. Port of New York Authority 392 F.2d 83 (2d Cir. 1968), cert. denied, 303 U.S. 940 (1968).

This Court has held statutes invalid and reversed convictions where speech-related conduct was impermissibly regulated on the grounds of the

United States Capitol, Jeannette Rankin Brigade v. Chief of Capitol Police 342 F.Supp. 575 (D.C. D.C. 1972), aff'd 409 U.S. 972 (1972); at City Hall and the Mayor's residence, Gregory v. City of Chicago 394 U.S. 111 (1969); in a bookmobile which was part of a public library, Brown v. Louisiana 383 U.S. 131 (1966); and on Statehouse grounds, Edwards v. South Carolina 372 U.S. 229 (1963).

In contrast, those instances where the Court has upheld the denial of access to public places for speech-related conduct involve statutes narrowly drawn to meet important security needs and governmental interest. For example, in Adderly v. Florida 385 U.S. 39 (1966) this Court held that for valid security reasons, demonstrators could not lawfully refuse to leave the premises of a county jail normally closed to the public. And, in Cox v. Louisiana 379 U.S. 559 (1965)

(Cox II) a narrowly drawn statute which prohibited picketing and parading near or inside a courthouse was upheld to preserve the fair and orderly administration of justice. Thus, though reasonable regulation is permissible in public places, rights to free speech and assembly may not be abridged in the name of regulation. The Georgia statute does not constitute legitimate regulation in that it fails to distinguish among types of public buildings and the types of normal activities carried on there. The Court's analysis of the governmental interest at stake, and the relevance and propriety of the forum to the expressive conduct sought to be regulated, varies widely as between a jail or a courthouse and a vast public meeting hall such as the World Congress Center. Petitioner does not assert that all regulation of speech-related activity

on state grounds is impermissible, but rather that in attempting to secure this end, the State has drawn too broadly with the consequence of restraining important First Amendment freedoms.

The punishment provisions in Ga. Laws 1976, pp. 471, 472, Section 3 (hereinafter referred to as Ga. Code §91-9908) are likewise irreconcilable with the balance that must be struck between First Amendment activity and narrow government regulation. Ga. Code §91-9908 makes it a misdemeanor for any person to either (1) refuse to obey a lawful order pursuant to the Act, or (2) refuse to vacate any property or building when requested to do so. The principal problem with the first provision of §91-9908 is §91-134. Under §91-134, a unilateral decision on the part of security personnel that activities interfere with normal operations inside

the building suffices to make a removal order "lawful." Under §91-134, denial of entrance to anyone carrying a sign is "lawful." The problem is that "lawful" is defined by §91-134, whose reach is impermissibly broad and violates federal constitutional principles. "Lawful" orders authorized under §91-134 are not "lawful" at all.

The second provision of Ga. Code §91-9088 does not require even a "lawful" order pursuant to the Act. If any security officer asks any other person to leave any State building--or any building utilized by the State or any of its agencies--the person must either obey or be guilty of a misdemeanor. The provision imposes criminal penalties without requiring any act or word independent of refusal, yet it requires no basis whatsoever for the request that is refused.

B. The Georgia Statute Is Unconstitutionally Vague In Violation Of The Fourteenth Amendment Guarantee Of Due Process.

Ga. Code §91-134 is unconstitutionally vague in that it fails to clearly define proscribed conduct. Security personnel are authorized to "deny the entrance of any person into or upon any property or building of the Authority or the State when such persons' activities are intended to disrupt or interfere with the normal activities and functions carried on in such building or property or have the potential of violating the security of personnel therein." (emphasis added) This provision (1) violates the requirement of fair warning to the innocent, (2) fails to provide explicit standards for its application, impermissibly delegating authority to security personnel and creating the danger of arbitrary and discriminatory application, and (3) operates

to inhibit the exercise of cherished First Amendment rights to free speech and assembly.

The Georgia Supreme Court construed this statute to include only "actual or imminent" disruption, citing Grayned v. City of Rockford, supra. App., infra, p. 8-A. However, this limitation is insufficient alone to save this statute from being held invalid.¹ In Grayned, this Court carefully relied on other parameters clearly provided by the Illinois statute, which strictly limited its applicability, i.e. the statute forbade noise willfully created, which disrupted or was about to disrupt normal school activities at fixed

¹Furthermore, petitioners contend that the broad language of Ga. Code §91-134 does not warrant this limiting construction. Intent to disrupt or interfere can not be equated with the actual or imminent causation of such harm.

times and at a sufficiently fixed place. Grayned v. City of Rockford 408 U.S. 104, 110-112 (1972). There are no similar limits circumscribing the reach of Georgia's statute, which extend to all State buildings and property, at all times.

The statute in issue, even as construed by the Georgia Supreme Court, fails to impose any further requirement regarding the nature of the disruption created. But, as this Court has held, the danger sought to be protected against must rise "far above public inconvenience, annoyance or unrest" within the First Amendment context. Terminello v. City of Chicago 337 U.S. 1, 4-5 (1959). This Court also has required that proscribed speech-related activity be confined to instances where the disruption or interference is "material and substantial." Tinker v. Des Moines Independent School District 393 U.S. 503 (1969); Brown v. Louisiana 383 U.S. 131 (1966).

When First Amendment rights are implicated, the permissible indefiniteness of official discretion narrows. Schneider v. State 308 U.S. 147 (1939). In Cox v. Louisiana 379 U.S. 536, 558 (1965) (Cox I) this Court stated that while "limited discretion, under properly drawn statutes . . . concerning the time, place, duration or manner" of using public property "may be vested in administrative officials," the Court voided the Louisiana statute because it provided such a "broad discretionary licensing power" as to permit selective and arbitrary enforcement. The absence of any limitation on the exercise of discretion under Georgia's statute herein similarly requires its invalidation.

The danger of broad discretion here is particularly pernicious where it is the official's task to make a purely subjective determination of a person's "intent" or

their "potential" to have certain effects. Ga. Code §91-134 requires only such a determination of "intent." There is no requirement of any overt act. Nor does Ga. Code §91-134 require that the "intent" be sufficiently definite as to rise above the type of "undifferentiated fear or apprehension of disturbance" or disorder, constitutionally protected by the First Amendment. Tinker v. Des Moines Independent School District 393 U.S. 503 (1969). And, no criteria exist nor may any be inferred in making such a finding of intent.

Further evidence of the statute's vagueness may be found in the fact that the accusation in this action was redrawn four times. App., infra, 10-A. There clearly can be no "fair warning" to innocent citizens under a statute where officials and lawyers charged with its enforcement fail to comprehend its meaning sufficiently to write a formal complaint thereunder. This also demonstrates the lack of any criteria by which

security personnel and others granted authority under the statute may be guided in the exercise of discretion in applying it to exclude or remove persons from state property.

II. This Case Presents A Substantial Federal Question Implicating The Unfettered Exercise Of Fundamental Rights Under The First Amendment.

The Georgia statute before this Court aims specifically at the bona fide intent to exercise freedoms of speech and assembly protected by the First Amendment. It applies to circumstances where the interest in expression may be great compared to a minuscule public interest in regulating that expression.

Contrary to the Georgia Supreme Court's finding that the statute proscribes only conduct, the restrictions it imposes on speech are quite direct. Ga. Code §91-134 authorizes security

personnel to deny entrance onto State property to "any person displaying any sign, banner, placard, poster or similar device." (emphasis added) This display-of-a-banner provision is strikingly similar to the provision held unconstitutional by this Court in Jeannette Rankin Brigade v. Chief of Capitol Police 342 F.Supp. 575 (D.C. D.C. 1972), aff'd 409 U.S. 972 (1972). That statute was however, even more narrowly circumscribed than Georgia's provision, imposing the additional element that the device be "designed to bring into public notice any party, organization or movement." Ga. Code §91-134 extends to even the tiniest sign carried on to State property. Applying the "intent" requirement imposed onto this provision by the Georgia Supreme Court's interpretation does not sufficiently limit this ban in the context of restricting speech.

The constitutional invalidity of this Georgia statute extends beyond the legitimate limitation of expressive conduct imposed in the interest of maintaining order, to chill and restrain individuals' unfettered exercise of First Amendment rights on all State property. The vagueness and overbreadth present therein deny to Georgia citizens the right to free speech and free assembly in derogation of the exercise of their First Amendment rights.

CONCLUSION

Based on the foregoing, Petitioner, Reverend Joseph Boone, prays that a writ of certiorari issue to review the judgment of the Supreme Court of Georgia entered April 4, 1979, which upheld the constitutionality of Ga. Laws 1976, pp. 471, 472, Ga. Code §§91-134, 91-9908.

Respectfully submitted,

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ATTORNEYS FOR PETITIONER

IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA)
v.) No. 1 8 2 4 6 7
REVEREND JOSEPH BOONE)

O R D E R

This case came on for trial and before joining issue on the merits, the Court heard oral argument of counsel on the demurrer filed by defendant, and makes the following determination.

Paragraph Three of demurrer asserts that the statute in question, Ga. Code §91-134, Acts 1976, p. 471-72, is facially unconstitutional because of its vagueness, overbreadth, and prior restraint on speech in violation of the Georgia and United States Constitutions. The Court observes that statute in question arms security personnel with authority to determine

the subjective intent of a party prior to any act being committed; it arms such personnel with the authority to exclude persons from entering State Building Authority properties if the security person determines that one seeking entry has the potential of violating the security of personnel therein thus placing in the hands of security persons the ability to exercise prior restraint on free speech; and it arms security persons of said authority with the authority to exclude persons from entry on to State Building Authority premises merely because they display banners, placards, etc., again placing security persons in the position of exercising prior restraint on free speech.

The Court finds that Ga. Code §91-134 & 9908 Laws 1976, p. 471-72 is unconstitutional on its face because of

its vagueness and because it is so overbroad as to violate the due process and equal protection clauses of the Georgia and United States Constitutions and invites discriminatory application in violation of the equal protection clause under Ga. Constitution, Article I, Sec. I, para. III (Ga. Code 2-103), para. II (Ga. Code 2-102); and United States Constitution, Fifth and Fourteenth Amendments. Further, the Court rules that the statute restricts free speech and assembly contrary to the First Amendment of the United States Constitution and Georgia Constitution Act 1, Sec. 1, para. XV (Ga. 2-115).

The remaining grounds of the demurrer need not be passed upon because of the above ruling.

The statute under which the defendant was charged having been

declared unconstitutional, the defendant is hereby discharged.

This 8th day of November, 1978.

/s/ Daniel Duke

34633. THE STATE v. BOONE.

UNDERCOFLER, Presiding Justice.
This appeal by the state challenges dismissal of criminal misdemeanor charges against Boone for leading

approximately 25 people in a demonstration on state property known as the Georgia World Congress Center. The state's indictment was brought under Code Ann. §§ 91-134 and 91-9908 (Ga. L. 1976, pp. 471-473, as amended), which prohibits interference with and disruption of activities and operations on all state property and in all state buildings.¹ It accused Boone of leading the group in singing, talking in loud voices, standing and kneeling in close proximity so as to block the

¹Ga. L. 1976, pp. 471-473, as amended, provides in pertinent part as follows: "Section 1. The Georgia Building Authority and its security personnel and members of the Georgia State Patrol and Georgia Bureau of Investigation are hereby authorized and empowered to deny the entrance of any person into or upon any property or building of the Authority or the State when such person's activities are intended to disrupt or interfere with the normal activities and functions carried on in such property or building or have the potential of violating the security of the personnel therein. The Authority and its security personnel and members of the Georgia State Patrol and Georgia Bureau of Investigation are hereby authorized and empowered to deny entrance into or upon any such property or building of any person displaying any sign, banner, placard, poster or similar device. The Authority and its security personnel and members of the Georgia State Patrol and Georgia Bureau of Investigation are hereby authorized and empowered to remove any person from any such property or building when such person's activities interfere with or disrupt the activities and the operations carried on in such property or building or constitute a safety hazard to such property or building or the inhabitants thereof. The authority and power provided herein shall also extend to any property or building utilized by the State or any agency thereof. Any law enforcement officer assisting the Authority or any of its security personnel and members of the Georgia State Patrol and Georgia Bureau of Investigation shall have the same authority and power bestowed upon the Authority by this Act." Code Ann. § 91-134.

flow of pedestrian traffic in that part of the main lobby adjacent to the administrative offices, and of refusing to vacate the property and building where ordered to do so.²

Boone rebutted these allegations contending he led the group in prayer over diminishing welfare benefits and employment discrimination in the Center; that State Highway patrolmen and Georgia Building Authority security personnel, removed their hats and respected the prayer period, then ordered the group to leave. Boone argued he had asked to see the manager of the Center and was told to wait while he was summoned. At this point, the officers refused to let the group wait and arrested them. At the preliminary hearing, all charges were dismissed except those against Boone. The order to leave was given only to him. A motion attacking the constitutionality of the statute was filed and argument heard prior to joining issue on the merits. The trial court determined the statute was "facially unconstitutional" as being vague, overbroad and imposed prior restraint on free speech, observing the statute arms security personnel with authority to determine the subjective intent of a party prior to any act being committed; arms them with authority to exclude persons if the guard thinks they pose a threat to security or if they are "merely" displaying banners or placards. These provisions "invite discriminatory application" and restrict free speech and assembly in violation of the Georgia and United States Constitutions.

The state contends it was error to hold the statute unconstitutional. We agree and reverse.

1. The statute is not facially overbroad nor so vague

²"Section 3. Any person who shall refuse to obey any lawful order of any such security personnel or law enforcement officer issued pursuant to this Act, or any person who shall refuse to vacate any such property or building when requested to do so, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished as for a misdemeanor." Code Ann. § 91-134. This penalty is also set out in Code Ann. § 91-9908 for refusing orders to leave given pursuant to §§ 91-134 and 91-135.

as to violate First Amendment freedoms of assembly or speech. Art. I, Sec. I, Par. XV, Ga. Const., 1976 (Code Ann. § 2-115); Art. I, U. S. Const. (Code §§ 1-801, 1-815). Its language clearly seeks to proscribe conduct, not free speech, and "... that conduct — even if expressive — falls within the scope of otherwise valid criminal laws that reflect legitimate state interests in maintaining comprehensive controls over harmful, constitutionally unprotected conduct..." *Broadrick v. Oklahoma*, 413 U. S. 601, 615 (93 SC 2908) (1973). See *United States v. Douglass*, 579 F2d 545, 550 (1978). Cf. *Federal Communications Commission v. Pacifica Foundation*, ___ U. S. ___ (98 SC 3026, 3037) (1978). Further, no constitutional infirmity is created by language in the statute authorizing exclusion of those persons whom a guard, by the exercise of subjective evaluation, determines has the potential of violating the security of personnel or whose activities are intended to disrupt or interfere with the normal activities and functions carried on in the building. Language regarding "intent" is commonly used in statutes regulating conduct.³ Law enforcement officers must exercise subjective evaluations as part of their duty to protect the public safety, peace,

³See *Jeanette Rankin Brigade v. Chief of Capitol Police*, 342 FSupp. 575 (1972) at pp. 587-588, where the court, after striking down a provision of law restricting *all* parades, etc., upon U. S. Capitol grounds, spoke with approval of other provisions of the same statutes which were enforceable. "... [T]hose who presently go upon the Capitol grounds . . . are subject to other sections of the existing laws regulating conduct within the Capitol grounds which forbid . . . (5) entering or remaining on the floor of either House, or gallery in violation of any rules, or any room with *intent to disrupt* the orderly conduct of official business, (6) uttering loud, threatening or abusive language, or engaging in any disorderly or disruptive conduct anywhere on the grounds with *intent to impede, disrupt, or disturb* the orderly conduct of any session of Congress . . ." (Emphasis supplied.) See 40 USC §§ 193(b)—293(f) (1970).

comfort and convenience from unauthorized conduct. "The state, no less than a private owner of property, has power to preserve the property under its control for the use to which it is lawfully dedicated. . ." *Adderley v. Florida*, 385 U. S. 39, 47 (87 SC 242) (1966). The statute, sub judice, proscribes specific conduct. These restrictions are limited and "... punish only conduct which disrupts or is about to disrupt normal. . . activities . . ." *Grayned v. City of Rockford*, 408 U. S. 104, 116 (92 SC 2294) (1972). See *Tinker v. Des Moines &c. School Districts*, 393 U. S. 503, 514 (89 SC 733) (1969).

2. We do not so narrowly construe the language of the statute authorizing denial of entrance into or upon state property to "any person displaying any sign, banner, placard, poster or similar device . . ." as prohibiting entry merely because such signs or placards are present. This prohibition must be construed together with those sentences authorizing denial of entry as construed in Division 1.

3. The statute is also not violative of due process or equal protection guarantees. It comports with fair notice to those to whom the statute is directed, and as we construe the language used here, *actual or imminent threat of harm or of disruption of on-going operations on state property or in buildings housing state agencies* is required. *Grayned v. City of Rockford*, *supra*; *Cameron v. Johnson*, 390 U. S. 611 (88 SC 1335) (1968). We also do not agree that the statute is overbroad as "sweeping within its prohibitions" what may not be punished under the First and Fourteenth Amendments. "[T]he government may adopt reasonable time, place and manner regulations, which do not discriminate among speakers or ideas, in order to further an important governmental interest unrelated to the restriction of communication." *Buckley v. Valeo*, 424 U. S. 1, 18 (96 SC 612) (1975). See *Erznoznik v. City of Jacksonville*, 422 U. S. 205, 209 (95 SC 2268) (1975); *Cox v. Louisiana*, 379 U. S. 536 (85 SC 453) (1965); *Adderley v. Florida*, *supra*; *Kovacs v. Cooper*, 336 U. S. 77 (69 SC 448) (1949).

Judgment reversed. All the Justices concur, except Hill, J., who concurs in Divisions 1 and 3, and in the judgment.

ARGUED MARCH 13, 1979 — DECIDED APRIL 4, 1979.

Violation of Georgia Building Authority Act;
constitutional question. Fulton State Court. Before Judge
Duke.

*Hinson McAuliffe, Solicitor, Charles Hadaway,
Assistant Solicitor, for appellant.*

*Arthur K. Bolton, Attorney General, Daniel M.
Formby, Assistant Attorney General, amicus curiae.*

*Brooks Franklin, Margie Pitts Hames, Al Horn,
Reber Boult, for appellee.*

STATE OF GEORGIA

CRIMINAL COURT OF FULTON COUNTY

Whereas the defendant in the above stated case has
 pled guilty to the offense stated herein,
 been found guilty of the offense stated herein,
 It is considered, ordered and adjudged by the Court that the defendant

- (a) pay a fine of _____ dollars and be confined for a term of _____ months in the Fulton County jail or public works camp, or such other place as the defendant can be lawfully confined.
 Provided, that the confinement specified shall be suspended on payment of the fine and on condition defendant not again violate the laws of Georgia.
- (b) Provided, that the confinement specified shall be restricted on the conditions set out in the Order of Probation and on condition that the defendant not again violate the laws of Georgia.
- (c) be confined under the jurisdiction of the State Board of Corrections in the State Penitentiary, in a public works camp, or such other institution as the Director of Corrections may direct for a period of _____ months.
 Provided, that the confinement specified is suspended on condition defendant not again violate the laws of Georgia.
 Provided, that the confinement specified shall be restricted on the conditions set out in the Order of Probation in said case and on condition that defendant not again violate the laws of Georgia.

This _____ day of _____, 197____

JUDGE, CRIMINAL COURT OF FULTON COUNTY

6-24-79

Taken	Date	By whom
10:00 A.M.	6-24-79	16355 [initials]
Fulton County of Fulton County		
THE STATE OF GEORGIA		
SECTION 427-507-1974		
Case No. 671		
Date of conviction		
Date of sentence		
Date of commitment		
Date of release		
Place of confinement		
Name of warden		
Signature of judge		

10-A

Criminal Court Fulton County	
Date _____	
The Defendant is to be held for arraignment unless otherwise directed, his or her attorney, bonds of one thousand dollars, copy of arraignment and probable cause. The day of _____, 197____	
Solicitor:	Defendant's Attorney:
We, the Jury, and the defendant	Date _____
Signed _____	Date _____
MARGIE PITTS HAMES, Assistant Counsel	Judge _____
COURT CLERK AND RECORDER	Judge _____
WITNESS	Judge _____

STATE OF GEORGIA, FULTON COUNTY

Came in person before me Raymond McDermid who, being duly sworn, deposes
and says on oath that from the best of his knowledge and belief
Joseph E. Boone

is guilty of the offense of MISDEMEANOR, to that the said accused is in the County of Fulton, on the
15th day of September 76, did

knowingly and without authority, remain upon the premises of the
State of Georgia Building Authority, located at 205 Magnolia St.,
N.W. after receiving notice from Raymond McDermid, the authorized
agent of said owner to depart from said premises

Searc'd and subscribed before me this
23rd Sept 76
day of 1976

Wilton C. Barnard Raymond McDermid
Notary Public, Fulton County, Georgia.

Contrary to Law.

STATE OF GEORGIA, FULTON COUNTY

I, Raymond McDermid in the name and behalf of the citizens of
Georgia, charge and accuse Joseph E. Boone
with the offense of MISDEMEANOR, to that the said accused is in the County aforesaid, on the
15th day of September 76, did

knowingly and without authority, remain upon the premises of the
State of Georgia Building Authority, located at 205 Magnolia St.,
N.W. after receiving notice from Raymond McDermid, the authorized
agent of said owner to depart from said premises

Contrary to the Laws of said State, the peace, good order and dignity thereof. This accusation is based
on the above attached affidavit.

Sept 19 _____ Term, 19 _____ Raymond McDermid Prosecutor
CRIMINAL COURT OF FULTON COUNTY Hiram McAdoo Solicitor
HIBBON MCADOO 3

11-A

NOTION AND ORDER TO PLACE CASE UPON THE

DEAD DOCKET

THE STATE OF GEORGIA

VS

Joseph E. Boone

1 STATE COURT OF FULTON COUNTY

1 CASE NO. 1688191 OFFENSE: Viol. Code Section
Act 957 1976
Laws p. 471

NOTION

Now comes the State and moves this Honorable Court
to place the above stated case upon the dead docket of the
court on the following grounds: This case has been
redrawn into case number 178468.

SOLICITOR, STATE COURT
OF FULTON COUNTY

222 E

Upon consideration of the foregoing motion, the same
granted, and it is ordered that the above stated case be
placed on the Dead Docket of this Court.

This 11th day of Oct 1976.

Philip S. LanierJUDGE, STATE COURT OF
FULTON COUNTY

12-A

STATE OF GEORGIA

Whereas, the defendant in the above stated case has
() pled guilty to the offense stated herein,
() been found guilty of the offense stated herein,
it is considered, ordered and adjudged by the Court that the defendant

- (a) pay a fine of _____ months in the Fulton County jail or public works camp, or such other place as the defendant can be legally confined.
 Provided, that the confinement specified shall be suspended on payment of the fine and on condition defendant not again violate the laws of Georgia.

Provided, that the confinement specified shall be protested on the conditions set out in the Order of Probation and on condition that the defendant not again violate the laws of Georgia.

(b) be confined under the jurisdiction of the State Board of Corrections in the State Penitentiary, in a public works camp, or such other institution as the Director of Corrections may direct, for a period of _____ months.
 Provided, that the confinement specified is suspended on condition defendant not again violate the laws of Georgia.
 Provided, that the confinement specified shall be protested on the conditions set out in the Order of Probation in said case and on condition that defendant not again violate the laws of Georgia.

This _____ day of _____ 19____.

JUDGE, STATE COURT OF FULTON COUNTY

STATE COURT OF FULTON COUNTY

I hereby certify that the within and foregoing is a true copy of the original as it stands in my office
and appears by the above copy to be a full and correct copy of the original as it stands in my office
6-27-79
Signed by *[Signature]*

on payment of the fine Georgia
prosecuted on the conditions set
defendant not again violate the

7 Corrections in the State Penitentiary.
Director of Corrections may direct
based on conditions defendant met
probated on the conditions set out
that defendant not again violate

STATE OF GEORGIA, FULTON COUNTY

Came in person before me, B. H. McDermid, who, being duly sworn, deposes and says on oath
that from the best of his knowledge and belief, Joseph E. Boone
is guilty of the offense of MISDEMEANOR, in that the said accused, in the County of Fulton, on the
19th day of September, 1926, did

after going on the premises of Georgia Building Authority located at 285 Magnolia St. N.W. and after interfering with and disrupting the operation carried on in such property by singing, praying, and kneeling and sitting on the floor, completely blocking the flow of pedestrian traffic, fail and refuse to obey the lawful order of Hugh Hardison authorised agent of the owner of such premises to depart from such premises and did fail to leave such premises after being ordered to leave such premises, by a law enforcement officer.

Contrary to Law.

Sworn to and subscribed before me this

395b September 2007

National Park Service, State of Georgia

STATE OF GEORGIA. — See [Georgia](#).

I, Hansen McAdoo, in the name and behalf of the citizens of Georgia, charge and accuse
Joseph E. Boone, with the offense of MISDEMEANOR, for that the said accused,
in the County of Fulton, on the 13th day of September, 1916,

after going on the premises of Georgia Building Authority located at 283 Magnolia St. N.W. and after interfering with and disrupting the operation carried on in such property by singing, praying, and kneeling and sitting on the floor, completely blocking the flow of pedestrian traffic, fail and refuse to obey the lawful order of Hugh Hardison authorized agent of the owner of such premises to depart from such premises and did fail to leave such premises after being ordered to leave such premises, by a law enforcement officer.

Contrary to the Laws of said State the good order peace and dignity thereof. This accusation is based on the above stated affidavit of J. H. McDermid.

STATE COURT OF FULTON COUNTY _____ Hanson McAniff
Hanson McAniff, Attorney General

MOTION AND ORDER TO PLACE CASE UPON THE

DEAD DOCKET

THE STATE OF GEORGIA
vs
Joseph E. Brown
STATE COURT OF FULTON COUNTY
CASE NO. 178468
OFFENSE: Vic. Code Section Act
957 1976 Laws p. 471

10710

Now comes the State and moves this Honorable Court to place the above stated case upon the dead docket of the court on the following grounds: This case has been redrawn into case number 179229.

REPLACEMENT, STATE COURTS
OF THE UNITED STATES

**SOLICITOR, STATE COURT
OF APPEALS, OREGON**

www.sabre.com

Upon consideration of the foregoing motion, the same granted, and it is ordered that the above stated case be placed on the Dead Docket of this Court.

This is the copy of CC-2-377 19

JUDGE, STATE COURT OF

19-3

STATE OF GEORGIA

STATE COURT OF FULTON COUNTY

Jesse E. Boone
Whereas, the defendant in the above stated case,
did commit to the offense stated herein,

Whereas, the defendant in the above stated case has
() pleaded guilty to the offense stated herein,
() been found guilty of the offense stated herein,
it is considered, ordered and adjudged by the Court that the defendant

- (a) pay a fine of _____ dollars and be confined for a term of _____ months in the Fulton County jail or public works camp, or such other place as the defendant can be lawfully confined.
_____) Provided, that the confinement specified shall be suspended on payment of the fine and on condition defendant not again violate the laws of Georgia.
_____) Provided, that the confinement specified shall be probated on the conditions set out in the Order of Probation and on condition that the defendant not again violate the laws of Georgia.

(b) be confined under the jurisdiction of the State Board of Corrections in the State Penitentiary, in a public works camp, or such other institution as the Director of Corrections may direct for a period of _____ months.
_____) Provided, that the confinement specified is suspended on condition defendant not again violate the laws of Georgia.
_____) Provided, that the confinement specified shall be probated on the conditions set out in the Order of Probation in said case and on condition that defendant not again violate the laws of Georgia.

This _____ day of _____, 19____

JUDGE - STATE COURT OF FULTON COUNTY

STATE OF GEORGIA		Case No. 52-2452	
WHITE COURT OF Fulton COUNTY Circuit Division			
Est. 1907			
Joseph E. Boone 15 Fair St., SW 7201			
Georgia Code Section ACT 957 1976 Law P. 971			
D.L. No. 1994		Item	App. Item
		B	H
Det. Atty. Al. McDon.		Tel. 522-4515	
Pro. Atty. Tel. Complaint One Other Cases		176169 & 176179	
Special Instructions			
		Fulton Co. State 211119	
Fulton Co. Sheriff		Fulton County Sheriff's Office Attn: Det. 211119 100 Peachtree Street Atlanta, Georgia 30303 Telephone 522-4515 Fax 522-4516 E-mail: det.211119@fcs.state.ga.us	
Det. Date _____ Reason for Report _____		Bmed Furtin	
Det. Date _____ Reason for Report _____		Bmed Furtin	
Det. Date _____ Reason for Report _____		Bmed Furtin	
BMP See Above		<i>Det. C. J. Boone 5/20/04</i>	
BMP See Above		Attachment of File Page _____	
		Approved by _____	

TRINITY	WARRANT	DATE SET
WITNESSES		
M. H. McDonald	(556-6049)	
Hugh Hardison (556-6049)		
Bill Richardson (CR-5704)		
R. Abernathy		
Ga. State Patrol		
Post 9.	556-6099	

State Court of Fulton County	
Time, 1P	Term, 19
The defendant is in the within corporation which	
represented, by an attorney, beneath of date,	
copy of accusation and grand	
jury, The day of _____ 1971	
Assistant Solicitor General	
Defendant's Attorney	
Judge - Foreman	
Date _____	

STATE OF GEORGIA, FULTON COUNTY

Came in person before me Raymond H. McDermid, who, being duly sworn, deposes and says on oath
that from the best of his knowledge and belief Joseph E. Boone
is guilty of the offense of MISDEMEANOR, in that the said accused, in the County of Fulton, on the
15th day of September, 1976, did

in concert with other persons, unknown to the prosecutor herein, go
upon the premises of the Georgia Building Authority, located at 285
Magnolia Street, N.W., and while thereupon, interfere with and disrupt
the activities and operations then and there being carried on in said
building and property by sitting in the floor of said building and thereby
blocking the flow of pedestrian traffic; and did refuse to vacate said
building and premises when requested to do so by Hugh Hardison, authorized
agent of the Georgia Building Authority and its security personnel, and
also by a law enforcement officer assisting the Georgia Building Authority
and its security personnel.

Contrary to Law.

Sworn to and subscribed before me this)
28th day of October, 1977.)

Milton C. Barwick) Raymond H. McDermid
Notary Public, State of Georgia.

Milton C. Barwick

STATE OF GEORGIA, FULTON COUNTY

I, Hanson McAuliffe, in the name and behalf of the citizens of Georgia, charge and accuse Joseph E. Boone
with the offense of MISDEMEANOR, for that the said accused,
in the County of Fulton, on the 15th day of September, 1976, did

in concert with other persons, unknown to the prosecutor herein, go
upon the premises of the Georgia Building Authority, located at 285
Magnolia Street, N.W., and while thereupon, interfere with and disrupt
the activities and operations then and there being carried on in said
building and property by sitting in the floor of said building and thereby
blocking the flow of pedestrian traffic; and did refuse to vacate said
building and premises when requested to do so by Hugh Hardison, authorized
agent of the Georgia Building Authority and its security personnel, and
also by a law enforcement officer assisting the Georgia Building Authority
and its security personnel,

Contrary to the Laws of said State, the good order, peace and dignity thereof. This accusation is based on
the above attached affidavit of Raymond H. McDermid.

STATE COURT OF FULTON COUNTY

Hanson McAuliffe
Hanson McAuliffe, Solicitor General

2210-001-1124

7

IN THE STATE COURT OF FULTON COUNTY

STATE OF GEORGIA

STATE OF GEORGIA

ACCUSATION NO. 179229

vs

Joseph Boone

Violation Code § Act 957,
Ga. Laws 1976, p. 471

ORDER OF COURT PLACING CASE ON THE
DEAD DOCKET

For good and sufficient cause, the Court is of the
opinion that the above stated case should be now placed
on the dead docket of this Court.

Therefore, it is the order of the Court that said
above stated case be placed on the dead docket of this
Court.

This, the 9 day of October 1978.

Abbie S. Lanier
JUDGE
STATE COURT OF FULTON COUNTY

18-A

17-A

STATE OF GEORGIA, FULTON COUNTY

Came in person before me Raymond H. McDermid who, being duly sworn, deposes and says on oath,
that from the best of his knowledge and belief Joseph E. Boone *Signature*
is guilty of the offense of MISDEMEANOR, in that the said accused, in the County of Fulton, *State of Georgia*
15th day of September 1976 *1976*

I hereby certify that the above witness, whose name appears on the foregoing document, did appear before me this day of September 15, 1976, and did then and there depose and swear to the truth of the foregoing in my office.
Witness my hand and seal of the State of Georgia in my office
6-27-79

lead a group of approximately twenty-five persons, who are unknown to the prosecutor herein, which, while upon the property and building of the State of Georgia, located at 285 Magnolia Street, N.W., known as the Georgia World Congress Center, interfered with and disrupted the activities and operations then and there being carried on in said property and building by singing and talking in loud voices, and by standing and kneeling in such close proximity so as to block the flow of pedestrian traffic in that part of the main lobby adjacent to the administrative offices; refuse to vacate said property and building when requested to do so by Dan Graveline, authorized agent of the Georgia Building Authority; and refuse to vacate said property and building when requested to do so by Hugh Hardison and Walter Stepney, law enforcement officers assisting the Georgia Building Authority and its security personnel.

In the County of Fulton, on the 15th day of September 1976 lead a group of approximately twenty-five persons, who are unknown to the prosecutor herein, which, while upon the property and building of the State of Georgia, located at 285 Magnolia Street, N.W., known as the Georgia World Congress Center, interfered with and disrupted the activities and operations then and there being carried on in said property and building by singing and talking in loud voices, and by standing and kneeling in such close proximity so as to block the flow of pedestrian traffic in that part of the main lobby adjacent to the administrative offices; refuse to vacate said property and building when requested to do so by Dan Graveline, authorized agent of the Georgia Building Authority; and refuse to vacate said property and building when requested to do so by Hugh Hardison and Walter Stepney, law enforcement officers assisting the Georgia Building Authority and its security personnel. *(1)* 19-A